Supreme Court, U.S.
FILED
SEP 19 2002
OFFICE OF THE CLERK

No. 02-258

IN THE

Supreme Court of the United States

SUSAN JINKS,

Petitioner,

v.

RICHLAND COUNTY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF IN OPPOSITION

ANDREW F. LINDEMANN
Counsel of Record
WILLIAM H. DAVIDSON, II
DAVID L. MORRISON
DAVIDSON, MORRISON AND
LINDEMANN, P.A.
1712 St. Julian Place, First Floor
Post Office Box 8568
Columbia, SC 29202
(803) 806-8222

Attorneys for Respondent

176310

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Cited Authorities	ii
Statement of the Case	1
Reasons for Denying the Petition	2
I. The decision of the South Carolina Supreme Court is a natural and logical extension of this Court's recent holding in *Raygor v. Regents of the University of Minnesota*.	2
II. The Petitioner disregards the ultimate issue as to whether Congress had the authority to toll a state law statute of limitations as applied to States and political subdivisions and instead focuses on the benefits of 28 U.S.C. § 1367(d).	4
III. The decision of the South Carolina Supreme Court does not conflict with any prior decisions of this Court, any federal court of appeals, or any state courts of last resort.	7
IV. The decision of the South Carolina Supreme Court is restricted to the facts presented in this case and cannot be read to bar any federal law that imposes a stay on state court proceedings or tolls a state law statute of limitations.	8
Conclusion	10

TABLE OF CITED AUTHORITIES

Page

Cases:

Blinn v. Florida Department of Transportation, 781 So. 2d 1103 (Fla. Ct. App. 2000) 8

Block v. North Dakota, 461 U.S. 273 (1983) 5

Estate of Fennell v. Stephenson, 137 N.C. App. 430, 528 S.E.2d 911 (2000), *rev'd in part*, 354 N.C. 327, 554 S.E.2d 629 (2001) 8

Gregory v. Ashcroft, 501 U.S. 452 (1991) 6

Jinks v. McCaulley, 163 F.3d 598 (1998) 1

Printz v. United States, 521 U.S. 898 (1999) 5, 6

Raygor v. Regents of the University of Minnesota, 534 U.S. 533 (2002) ..... *passim*

Regents of the University of Minnesota v. Raygor, 620 N.W.2d 680 (Minn. 2001), *aff'd on other grounds*, 534 U.S. 533 (2002) 8

United States Constitution:

U.S. Const. amend. X 3, 6

U.S. Const. amend. XI 3

Cited Authorities

Page

Statutes:

28 U.S.C. § 1367(d) ..... *passim*

42 U.S.C. § 1983 1

S.C. Code Ann. § 15-78-10, *et seq.* 5

S.C. Code Ann. § 15-78-100(a) 2, 5

STATEMENT OF THE CASE

The Petitioner, Susan Jinks, as the Personal Representative of the Estate of Carl Jinks, brought a survival action and a wrongful death action against Richland County and Dr. Charles Eskridge. The claims arise out of the death of Carl Jinks on October 18, 1994, while incarcerated at the Richland County Detention Center.

The Petitioner originally commenced an action in United States District Court asserting federal constitutional claims under 42 U.S.C. § 1983 and supplemental state law claims. Richland County and other defendants filed motions for summary judgment in that action. By order entered on November 20, 1997, United States District Judge Matthew J. Perry granted summary judgment for Richland County on the federal constitutional claims. An order dismissing the supplemental state law claims without prejudice was entered on December 3, 1997. Jinks then appealed to the Fourth Circuit Court of Appeals which affirmed the district court's rulings. *Jinks v. McCaulley*, 163 F.3d 598 (1998) (table).

Following the dismissal of the supplemental state claims and while the federal appeal was pending, the Petitioner filed an action in the Court of Common Pleas for Richland County. That action was filed on December 19, 1997, which was less than thirty days after the dismissal of the supplemental state law claims in the district court.

Following discovery, the case proceeded to trial before Judge L. Henry McKellar and a jury commencing on November 8, 1999. At the close of the cases-in-chief, the Respondent County moved for a directed verdict. Those motions were denied. The jury ultimately returned a defense

verdict on the survival action for both defendants. The jury returned a defense verdict on the wrongful death action for Dr. Charles Eskridge. However, the jury returned a verdict of $80,000 actual damages in favor of the Petitioner and against Richland County on the wrongful death action. The Respondent thereafter filed post-trial motions, including a motion for judgment notwithstanding the verdict based upon a statute of limitations defense. Those motions were also denied by the trial judge.

An appeal was filed to the South Carolina Court of Appeals. The appeal was then certified for immediate review by the South Carolina Supreme Court. By its decision issued April 22, 2002, the South Carolina Supreme Court reversed the trial court and ruled that the Petitioner's negligence claim was barred by the two-year statute of limitations under the South Carolina Tort Claims Act. *See* S.C. Code Ann. § 15-78-100(a). The court concluded that the tolling provision set forth in 28 U.S.C. § 1367(d) as applied to a political subdivision such as Richland County was unconstitutional.

REASONS FOR DENYING THE PETITION

I. The decision of the South Carolina Supreme Court is a natural and logical extension of this Court's recent holding in *Raygor v. Regents of the University of Minnesota*.

The South Carolina Supreme Court ruled that the federal tolling statute, 28 U.S.C. § 1367(d), is in violation of the Tenth Amendment as applicable to a political subdivision of the State of South Carolina. In ruling on the Respondent's Tenth Amendment challenge, the South Carolina Supreme Court analyzed the source and scope of congressional

authority and concluded that "Congress exceeded its constitutional authority in enacting § 1367(d) to the extent it interferes with the States' sovereignty to establish the conditions upon which tort actions may be maintained against political subdivisions." *Jinks v. Richland County*, 349 S.C. 298, 563 S.E.2d 104, 108 (2002). (Pet. App. A at10a).

The Petitioner seeks a writ of certiorari to review this holding that § 1367(d) violates the Tenth Amendment as applied to a political subdivision. However, a writ of certiorari is not necessary under these circumstances given this Court's decision last term in *Raygor v. Regents of the University of Minnesota*, 534 U.S. 533 (2002). In *Raygor*, this Court entertained an Eleventh Amendment challenge to § 1367(d), and based upon rules of statutory construction, this Court ruled that the statute does not apply to nonconsenting States. Importantly, this Court in *Raygor* recognized that:

> [W]ith respect to suits against a state sovereign in its own courts, we have explained that a State "may prescribe the terms and conditions on which it consents to be sued," and that "[o]nly the sovereign's own consent could qualify the absolute character of [its] immunity" from suit in its own courts. Thus, although we have not directly addressed whether federal tolling of a state statute of limitations constitutes an abrogation of state sovereign immunity with respect to claims against state defendants, we can say that the notion at least raises a *serious constitutional doubt*.

534 U.S. at __, 122 S. Ct. at 1006. (Citations omitted) (Emphasis added).

In *Jinks*, the South Carolina Supreme Court relied on the *Raygor* decision and, in fact, explained that the *Raygor* Court found that the issue presented by the County's appeal raised "serious constitutional doubt." Ultimately, the decision below applies and gives fruition to the analysis employed by this Court in *Raygor*. In essence, the decision below is the natural and logical extension of the holding set forth in *Raygor*. For this reason, it is unnecessary for this Court to grant a writ of certiorari in the present case. A denial of certiorari when read in combination with the decision in *Raygor* will sufficiently place the bar and bench on notice that § 1367(d) is inapplicable to both States and political subdivisions.

II. The Petitioner disregards the ultimate issue as to whether Congress had the authority to toll a state law statute of limitations as applied to States and political subdivisions and instead focuses on the benefits of 28 U.S.C. § 1367(d).

Like the dissent in *Raygor*, the Petitioner attempts to shift the focus from the constitutionality of the statute to its utility. The Petitioner argues the many perceived benefits of § 1367(d) to the orderly operation of the federal courts. The Petitioner further asserts that other federal statutes containing tolling provisions may also be unconstitutional if the decision below is allowed to stand. Yet, the issue is not whether tolling provisions such as § 1367(d) serve a beneficial purpose. Instead, the issue is whether Congress had the authority to toll a state law statute of limitations where the defendant is a State or a political subdivision. Simply because a statute may have a beneficial purpose or have some rational basis does not mean that Congress had the authority to enact the law.

In her petition for writ of certiorari, the Petitioner does not address with any specificity the question raised by her petition — whether Congress was authorized under Article III and the Necessary and Proper Clause to enact § 1367(d) and apply the tolling provision to governmental entities which enjoy sovereign immunity. The ruling on that question by the South Carolina Supreme Court, as foreshadowed by this Court's decision in *Raygor*, was a correct one.

The Petitioner ignores the authority cited in *Raygor* holding that a State may place restrictions on the waiver of sovereign immunity, including a statute of limitations. *See Block v. North Dakota*, 461 U.S. 273, 287 (1983) ("When waiver legislation contains a statute of limitations, the limitations provision constitutes a condition on the waiver of sovereign immunity"). In South Carolina, the enactment of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, reinstated sovereign immunity with certain exceptions. As the South Carolina Supreme Court explained in its decision, the waiver of sovereign immunity is limited by a two-year statute of limitations. *See* S.C. Code Ann. § 15-78-100(a). Thus, sovereign immunity is not waived unless a suit is filed within the prescribed limitations period. In the present case, the state court action was filed long after the two-year statute of limitations had expired, and as a result, the Respondent enjoyed sovereign immunity from suit.

Thus, the effect of applying § 1367(d) to a South Carolina governmental entity such as Richland County in the case at bar was to enlarge the State's waiver of sovereign immunity. Under the reasoning of *Block* and *Raygor*, that alone constitutes impermissible interference with state sovereignty. In *Printz v. United States*, 521 U.S. 898 (1999), this Court

held that a law is not "proper" under the Necessary and Proper Clause where it "violates the principle of state sovereignty." 521 U.S. at 924. Thus, the South Carolina Supreme Court correctly ruled that Article III and the Necessary and Proper Clause are not a proper source for congressional power to toll a state law statute of limitations as applied to a State or political subdivision.

At the very least, the application of § 1367(d) affects the constitutional balance between States and the Federal government. In *Raygor*, this Court explained:

> [A]llowing federal law to extend the time period in which a state sovereign is amenable to suit in its own courts at least affects the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity.

534 U.S. at __, 122 S. Ct. at 1006. This Court applied the clear statement principle of statutory construction to determine whether Congress even intended to alter the state-federal balance so as to apply § 1367(d) to a State or political subdivision. This Court concluded that "§ 1367(d) reflects no specific or unequivocal intent to toll the statute of limitations for claims asserted against nonconsenting States." 534 U.S. at __, 122 S. Ct. at 1007. Likewise, it may be said that § 1367(d) reflects no specific or unequivocal intent to toll the statute of limitations for claims asserted against any political subdivision, such as Richland County. *See Gregory v. Ashcroft*, 501 U.S. 452 (1991) (adopting plain statement rule with respect to statutory ambiguity that implicates Tenth Amendment concerns).

Apparently recognizing that *Raygor* would compel an affirmance in this case,[1] the Petitioner argues in this Court for the first time that the decision by the South Carolina Supreme Court constitutes a violation of due process or at least impedes a litigant's right of access to a federal forum. *See*, Petition, pp. 15-19. In this same vein, the Petitioner argues that the decision by the South Carolina Supreme Court somehow discriminates against litigants asserting federal constitutional rights. *See* Petition, pp. 26-27. Nonetheless, these arguments cannot and do not override the absence of congressional authority to interfere with the exercise of state sovereignty by applying § 1367(d) to a State and its political subdivisions.

III. The decision of the South Carolina Supreme Court does not conflict with any prior decisions of this Court, any federal court of appeals, or any state courts of last resort.

The decision of the South Carolina Supreme Court in this case does not conflict with a decision of another state court of last resort nor a decision of a United States court of appeals nor a decision of this Court. To the contrary, the decision below is consistent with the decision of the United States Supreme Court in *Raygor*, *supra*. Furthermore, no decision of a United States court of appeals has ever addressed the constitutionality of § 1367(d).[2] Finally, the only

1. Remarkably, the Petitioner does not discuss nor even cite to this Court's decision in *Raygor* in her petition for writ of certiorari.

2. No federal court of appeals will likely have the opportunity to address this issue because the federal tolling provision is never applied in federal court cases. In fact, the Petitioner has not and cannot (Cont'd)

state court of last resort to address the constitutionality of § 1367(d) is the Minnesota Supreme Court which found the statute to be unconstitutional. *Regents of the University of Minnesota v. Raygor*, 620 N.W.2d 680 (Minn. 2001), *aff'd on other grounds*, 534 U.S. 533 (2002).[3]

IV. The decision of the South Carolina Supreme Court is restricted to the facts presented in this case and cannot be read to bar any federal law that imposes a stay on state court proceedings or tolls a state law statute of limitations.

The Petitioner suggests that the decision below, if allowed to stand, will override any federal law that imposes a stay on state court proceedings or tolls a state law statute of limitations. This suggestion is erroneous for two primary reasons.

(Cont'd)
cite a single federal court case where § 1367(d) is applied to toll a state statute of limitations. The tolling provision is applied only in state law cases pending in state courts. That is truly illustrative of the fact that § 1367(d) is a federal statute applicable only to state courts.

3. The constitutionality of § 1367(d) has been upheld in two state court cases; however, those cases were decided by intermediate state appellate courts. *See Blinn v. Florida Department of Transportation*, 781 So. 2d 1103 (Fla. Ct. App 2000) (review of this issue was not sought in Florida Supreme Court); *Estate of Fennell v. Stephenson*, 137 N.C. App. 430, 528 S.E.2d 911 (2000), *rev'd in part*, 354 N.C. 327, 554 S.E.2d 629 (2001) (North Carolina Supreme Court did not address constitutionality of § 1367(d)). Neither case includes a particularly detailed or thoughtful analysis of the complex constitutional issues raised. A more persuasive and better reasoned analysis, albeit succinct, is contained in the dissent in *Blinn*.

First, the South Carolina Supreme Court restricted its holding in *Jinks* to the factual circumstances presented. The court ruled that Congress exceeded its authority in enacting § 1367(d) only "to the extent it interferes with the States' sovereignty to establish the conditions upon which tort actions may be maintained against political subdivisions." *Jinks*, 563 S.E.2d at 108. (Pet. App. A at10a). The court concluded that "the tolling provision does not apply in these circumstances." *Id*. The *Jinks* opinion cannot be read as a broad ruling declaring § 1367(d) unconstitutional in all circumstances and as applied to all defendants, governmental and non-governmental alike. Moreover, the *Jinks* opinion cannot be read as limiting the ability of Congress to legislate a stay of state court proceedings in the varied contexts raised by the Petitioner.

Second, the South Carolina Supreme Court has held only that Congress lacked the authority under Article III and the Necessary and Proper Clause to toll the statute of limitations applicable to a state law claim against Richland County. The *Jinks* court did not decide nor even suggest that Congress lacks authority to provide for the tolling of a statute of limitations in other contexts such as the Soldiers' and Sailors' Civil Relief Act or the Y2K Act. It is possible that authority exists under Article I for those tolling provisions.

The Respondent, therefore, disagrees with the Petitioner's suggestion that this case "presents an issue of great federal importance with ramifications for a wide variety of statutes." *See* Petition, p. 12. To the contrary, this appeal presents an issue largely decided in *Raygor*. As stated, this case represents an anticipated and logical extension of the *Raygor* holding. *Raygor* holds that the tolling provision set

forth in § 1367(d) does not apply to States, and under a similar rationale, the court below extended that holding to political subdivisions.

CONCLUSION

For the foregoing reasons, the Respondent submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ANDREW F. LINDEMANN
Counsel of Record
WILLIAM H. DAVIDSON, II
DAVID L. MORRISON
DAVIDSON, MORRISON AND
LINDEMANN, P.A.
1712 St. Julian Place, First Floor
Post Office Box 8568
Columbia, SC 29202
(803) 806-8222

Attorneys for Respondent